

Chapter 15 - Contracting by Negotiation

Section 15.1 Unsolicited Proposals

15.1.1 PURPOSE

This section establishes a centralized control and procedure for the receipt, accounting, and processing of unsolicited proposals.

15.1.2 BACKGROUND

This section was originally issued as Chapter 3 of the Contracts Management Manual.

15.1.3 AUTHORITY/APPLICABILITY

The authority for this section is based on the procedures prescribed in Federal Acquisition Regulation (FAR) Subpart 15.6, Unsolicited Proposals.

15.1.4 DEFINITION

An unsolicited proposal is defined in FAR 2.101. It means a written proposal for a new or innovative idea that is submitted to an agency on the initiative of the offeror for the purpose of obtaining a contract with the Government, and that is not in response to a request for proposals, Broad Agency Announcement, Small Business Innovative Research topic, Small Business Technology Transfer Research topic, Program Research and Development Announcement, or any other Government-initiated solicitation or program.

15.1.5 POLICY

Proposals are voluntarily submitted by individuals and various types of organizations having scientific and technological ideas which they feel will contribute to the success of the EPA mission. Many of these proposals may be of little or no value to EPA. However others may be substantially beneficial and may therefore merit EPA support in the form of a grant or contract.

15.1.5.1 Centralized Control Point

A centralized control point is located in the Grants Administration Division to process unsolicited proposals regardless of where they are received in EPA. To fully utilize the source of scientific and technical information being submitted, the Agency should encourage the submission of unsolicited proposals and should promptly acknowledge receipt of a proposal. The proposal will then be evaluated for its scientific merit and relevance to EPA programs.

15.1.5.2 Procedure

- A) Unsolicited proposals received by any organizational element of EPA shall be forwarded immediately to the Grants Administration Division for official receipt and processing.
- B) The Grants Administration Division will: (1) acknowledge receipt to the person or organization submitting the proposal; (2) assign a proposal control number; and (3) transmit

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the proposal to the appropriate program office for evaluation.

- C) If the proposal is to be funded as a grant, the proposal will be returned to the Grants Administration Division for further processing. If the proposal is to be funded by contract, a procurement request will be forwarded to the appropriate contracting office.

15.1.5.3 Disclosure and Use of Proposal Data

- A) Because of the "proprietary rights" involved in unsolicited proposals, ethical and legal considerations impose restrictions on the disclosure and use of data submitted with the proposal.
- B) The Grants Administration Division is authorized to copy, photograph, or reproduce in any manner any part of an unsolicited proposal. All other organizational elements of EPA must obtain approval from the Grants Administration Division before duplicating information from unsolicited proposals.

15.1.5.4 Award Without Full and Open Competition

Although contracts resulting from unsolicited proposals may be awarded without full and open competition, the unsolicited proposal does not, in and of itself, justify such action. Award of a contract without full and open competition must be justified as prescribed in FAR Part 6 and EPA Acquisition Regulations (EPAAR) Part 1506, "Competition Requirements."

Section 15.2 Use of Past Performance as an Evaluation Factor in the Award of EPA Contracts

15.2.1 PURPOSE

This section provides sample copies of a Client Authorization Letter and Past Performance Questionnaire. It also provides guidance for conducting reference checks.

15.2.2 BACKGROUND

Contracting officers should consult relevant subparts of FAR Part 15 and the EPAAR subparts 1515.209 (c) and 1552.215-75 for more detailed guidance on the use of past performance as an evaluation factor. In addition, the OFPP Best Practice Guide for Past Performance dated May 2000 may prove to have helpful information and is accessible on OAM's Intranet site at <http://intranet.epa.gov/oamintra/policy/index.htm>.

This section was originally issued as Procurement Policy Notice (PPN) 96-01 dated December 4, 1995, from Betty L. Bailey, Director of the Office of Acquisition Management to OAM Division Directors, Regional Contracting Officer Supervisors, and Ray Spears, OGC.

15.2.3 AUTHORITY/APPLICABILITY

FAR 15.304 (c)(3) requires past performance to be evaluated in all source selections for negotiated competitive acquisitions in excess of \$100,000, unless the contracting officer documents in the contract file why past performance is not an appropriate evaluation factor for the acquisition.

15.2.4 DEFINITIONS (RESERVED)

15.2.5 POLICY

15.2.5.1 Procedures

A) Client Authorization Letter. In accordance with EPAAR 1552.215-75 (e), a sample Client Authorization Letter may be used to inform an offeror's past performance reference that EPA may inquiry about the offeror's performance history with the reference. Solicitations should indicate that Client Authorization Letters (see Appendix 15.2A for a sample Client Authorization Letter) must be mailed or e-mailed to individual references no later than five (5) working days after proposal submission. The offeror should forward a copy of the Client Authorization Letter to the contracting officer simultaneously with mailing to references.

B) Past Performance Questionnaire. In accordance with EPAAR 1552.215-75 (g), a sample Past Performance Questionnaire (see Appendix 15.2B for a sample Past Performance Questionnaire) may be used to collect information on an offeror's performance under existing and prior contracts/subcontracts for products or services similar in scope, magnitude, relevance, and complexity to the requirement in order to evaluate offerors consistent with the past performance evaluation factor in the solicitation. The questionnaire is intended for telephonic responses; however, it may also be used for non-telephonic responses when evaluating past performance. Questionnaires should relate specifically to past performance subfactors. The questionnaire may

be adopted by the contracting officer, with input from the project officer, to include information as appropriate for an individual acquisition.

C) Conducting Reference Checks. Telephonic responses to the Past Performance Questionnaire are the most practical and cost effective method for conducting reference checks. The questionnaire must be completed in writing, marked "source selection sensitive," and included as part of the evaluation information for each offeror. Other forms of collecting information in the questionnaire may include face-to-face interviews, mail/fax/e-mail questionnaires to references, or any combination. The contracting officer, in conjunction with the project officer, shall determine the most efficient manner for obtaining past performance information, such as having one evaluator gather the questionnaire information for all offerors, or by assigning individual offers to individual evaluators to obtain the questionnaire information. The contracting officer, in conjunction with the project officer, shall also determine a reasonable number of references to be contacted for all references.

APPENDIX 15.2A CLIENT AUTHORIZATION LETTER

[Addressee]

Dear "Client":

We are currently responding to the Environmental Protection Agency RFP No. _____ for the procurement of _____. The EPA is placing increased emphasis in their acquisitions on past performance as a source selection evaluation factor. EPA requires offerors to inform references identified in proposals that EPA may contact them about past performance information.

If you are contacted by EPA for information on work we have performed under contract for your company/agency/state or local government, you are hereby authorized to respond to EPA inquiries.

Your cooperation is appreciated. Please direct any questions to _____ (offeror's point-of-contact)

Sincerely,

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APPENDIX 15.2B - PAST PERFORMANCE QUESTIONNAIRE

SOURCE SELECTION SENSITIVE INFORMATION Name of
offeror:

Contract Information

Name of Contractor: _____ Contract Number: _____
 Contract Title: _____ Contract Value: _____
 Type of Contract: _____ Period of Performance: _____

The ratings below are supplied by the contractor identified above, **NOT** the offeror.

Performance Elements	Totally Deficient 0	Poor 1	Inadequate 2	Adequate 3	Good 4	Superior 5
1. Quality of Product or Service						
2. Timeliness of Performance						
3. Effectiveness of Management						
4. Initiative in Meeting Requirements						
5. Response to Technical Direction						
6. Responsiveness to Performance Problems						
7. Compliance with Cost Estimates						
8. Customer Satisfaction						
9. Overall Performance						

10. Remarks on outstanding performance:

Provide data supporting this observation; you may continue on a separate sheet if needed.

11. Remarks on unsatisfactory performance:

Provide data supporting this observation; you may continue on a separate sheet if needed.

12. Please identify any corporate affiliations with the offeror.

13. Would you do business with _____ again?
(insert offeror's name)

14. Information provided by:

Name:

Title:

Mailing Address (Street and P.O. Box):

City, State and Zip Code:

Telephone Number:

Fax Number:

Time of Call:

Date Information provided:

15. Questionnaire completed by:

Name of EPA Employee:

Signature of EPA Employee:

Title:

Date Questionnaire Completed: